
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213
DA 98-762

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To: **Common Carrier Bureau**

MAY 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

METROCALL, INC.
PETITION FOR EXTENSION OF COMPLIANCE DATE

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Date: May 21, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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To: Common Carrier Bureau

METROCALL, INC.
PETITION FOR EXTENSION OF COMPLIANCE DATE

Metrocall, Inc. ("Metrocall"), through its undersigned counsel respectfully submits its Petition for Extension ("Petition") of the October 25, 1998 compliance date pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA").¹ As detailed below, compliance with these capability requirements for advanced messaging services is not reasonably achievable through the application of existing paging network technology, and will not be reasonably achievable until at least two years after final capacity and capability requirements for advanced paging equipment are promulgated.

I. Introduction

Metrocall is the second largest paging company in the nation, with over 4,000,000 subscribers. As a telecommunications carrier, Metrocall is subject to the assistance capability requirements of CALEA, as well as the capacity requirements of CALEA.

The "assistance capability requirements" of Section 103(a) of CALEA require

¹ Pub. L. 103-414, 108 Stat. 4279 (1994), codified at 47 U.S.C. §§ 1001 et seq., §1006(c).

telecommunications carriers to ensure that their equipment, facilities, and services are capable of providing law enforcement officials with the call content and the "call identifying information that is reasonably available to the carrier" for an intercepted communication, by October 25, 1998.² Section 107 of CALEA requires the Attorney General to consult with the telecommunications industry's standard-setting organizations, in order to assist these organizations in promulgating technical standards for CALEA-compliant equipment.³ These standards were intended to allow manufacturers to build equipment that meets the assistance capability requirements of CALEA's Section 103(a), as they designed new equipment for their service provider customers.⁴ Manufacturers and carriers are further required to cooperate in order to ensure that carriers are provided with CALEA-compliant equipment "on a reasonably timely basis and at a reasonable charge."⁵ Thus, in enacting CALEA, Congress envisioned a cooperative process whereby industry standards-setting bodies would promulgate technical standards for CALEA-compliant equipment, and manufacturers would utilize these standards to provide telecommunications carriers—including messaging providers—with access to such equipment.⁶

At the same time, law enforcement was to provide the telecommunications industry, by

² 47 U.S.C. § 1002(a).

³ 47 U.S.C. § 1006(a)(1).

⁴ 47 U.S.C. § 1002(a).

⁵ 47 U.S.C. § 1005(a).

⁶ 47 U.S.C. § 1003(a).

October 25, 1995, with notice of its simultaneous capacity requirements.⁷ The industry would then have three years to factor these requirements into its capability standards and design and install the additional equipment necessary to implement these capacity requirements.

Consistent with this statutory scheme, Congress expected that sometime between the October 25, 1994 CALEA enactment date and the October 25, 1998 assistance capability compliance deadline, capacity and capability standards would be promulgated and CALEA-compliant messaging equipment would be made commercially available. Thus, as messaging providers naturally upgraded and replaced their network infrastructure over this four year period, they would be replacing old, non-compliant equipment with new, compliant equipment without significant financial burden. In other words, as a result of a gradual replacement process, carriers would not have to make a large and sudden investment in new equipment at the compliance deadline in order to make their networks capable of meeting the assistance capability and capacity requirements.

Unfortunately, the Congressionally-envisioned gradual and low cost transition to CALEA-compliant equipment has not taken place. Metrocall and other carriers⁸ are committed to providing the capability and capacity required by CALEA. They cannot do so, however, until law enforcement's requirements have been identified and appropriate industry standards have been established. As discussed in greater detail below, because of understandable resource constraints, the Federal Bureau of Investigation has focused its energies on other industries (in

⁷ Id.

⁸ See AT&T Wireless, Lucent Technologies and Ericsson, Inc. Petition for Extension of Time (March 30, 1998); PrimeCo Petition for Extension of Time (April 21, 1998); USTA Petition for Extension of Time (April 24, 1998).

particular, the local exchange, cellular and personal communications service industries) and has not been able to identify its requirements for the messaging industry. Without the input of the FBI, especially its capacity requirements, it is virtually impossible for the paging industry to satisfy CALEA's assistance capability requirements by October 25, 1998. Therefore, Metrocall requests that the compliance deadline be extended for at least two years until law enforcement's capacity and capability requirements can be identified and an appropriate industry standard can be promulgated.

Despite the unavailability of such requirements, Metrocall has in the past made, and will continue to make, every effort to provide law enforcement officials with the ability to engage in court ordered electronic surveillance. In particular, Metrocall routinely provides law enforcement officials, pursuant to a valid warrant, with cloned pagers, which allow law enforcement officials to transparently intercept all pages intended for the subject of the warrant. This capability provides law enforcement officials with the ability to monitor Metrocall's paging customers who use traditional, one-way paging services. Thus, granting Metrocall's extension request will have a minimal impact on public safety. Indeed, representatives of law enforcement have repeatedly advised the paging industry that cloned pagers are the preferable monitoring device for traditional, one-way paging.⁹

II. Statutory Criteria for Extension of the Compliance Deadline

Under Section 107(c) of CALEA, a telecommunications carrier "may petition the Commission for 1 or more extensions of the deadline for complying with the assistance

⁹ Motorola Reply Comments, CC Docket No. 97-213, at 7 and n.21 (Feb. 11, 1998).

capability requirements under section 103."¹⁰ The Commission may then, "after consultation with the Attorney General," grant such an extension request if "compliance with the assistance capability requirements . . . is not reasonably achievable through application of technology available within the compliance period."¹¹ When determining whether compliance with the assistance capability requirements is "reasonably achievable," the Commission is directed to consider the effect of compliance on, inter alia: (1) the need to achieve the assistance capability requirements by "cost effective methods;" (2) the nature, cost, and operation of the equipment, facility, or service at issue; and (3) public safety and national security.¹² As discussed below, Metrocall clearly satisfies these statutory requirements for an extension of the October 25, 1998 compliance deadline.

III. Compliance with the Assistance Capability Requirements Is Not Reasonably Achievable for Metrocall

Since October 1994, when CALEA was signed into law, the FBI has publicly and repeatedly stated that it will utilize its limited implementation resources in a manner that allows law enforcement officials to conduct the types of electronic surveillance that will have the greatest impact on thwarting and prosecuting criminal activity. Consistent with this philosophy, the FBI has focused its efforts on developing the ability to monitor potential illegal activity that is conducted using local exchange, cellular, and PCS facilities.

As the Commission is aware, the FBI has deferred determining its capacity and capability

¹⁰ 47 U.S.C. § 1006(c).

¹¹ 47 U.S.C. § 1008.

¹² 47 U.S.C. § 1008(b)(1).

requirements for the paging industry until after it has addressed these other industries¹³ CALEA requires the FBI to (1) promulgate final capacity requirements by October 25, 1995, and (2) cooperate with industry standards-setting bodies to help translate CALEA's assistance capability requirements into technical standards for the manufacture of telecommunications equipment. Because of its resource constraints, the FBI has been unable to satisfy either of these requirements. As further evidence thereof, the FBI in its Final Capacity Notice—which was issued on March 12, 1998—made no mention of the paging industry. Further, the FBI has made no public statement regarding specific paging assistance capability requirements that it believes are mandated by Section 103.

This lack of FBI guidance on the issues of paging capacity and paging capability has made it difficult for Metrocall to design, build, test and install CALEA-compliant equipment. Nevertheless, the messaging industry has initiated a standards-setting exercise in which Metrocall has been participating.

In December 1997, shortly after the promulgation of the interim standard for wireline and wireless telephony -- J-STD-025 -- the paging industry, under the auspices of PCIA, established a working group to review the interim standard and the FBI's Electronic Surveillance Interface ("ESI") document, to determine if the concepts in either document were applicable to the paging industry. The working group eventually determined that neither document's requirements readily translated to paging and that a separate standard for the messaging industry would be necessary.

As a result, the PCIA Technical Committee established a subcommittee to initiate a

¹³ See PCIA Comments at 6, n. 10.

CALEA paging project. This joint carrier and manufacturer effort is seeking to translate CALEA's assistance capability into technical standards for the messaging industry. The subcommittee has completed the first phase of establishing such a standard (addressing the use of cloned pagers) and has shared the document with law enforcement.

However, FBI input -- especially regarding its capacity requirements -- is critical to the continued success of this industry effort. As discussed below, industry's solution for traditional, one-way paging (cloned pagers) can easily satisfy any reasonable capacity requirement. The absence of a capacity standard, however, is having a dramatic impact on the subcommittee's work to develop standards for more advanced paging features. Depending on how many simultaneous interceptions a service provider is required to conduct, certain cost-effective solutions may be technically feasible and others may not. In the absence of such requirements, the subcommittee must make good faith estimates regarding law enforcement's capacity requirements and hope that it has selected designs that are sufficiently scalable to satisfy whatever capacity requirements the FBI may eventually identify.

For these reasons, Metrocall urges the Commission to grant an immediate, two-year extension of the compliance deadline until law enforcement's capacity and capability requirements can be identified and an appropriate industry standard (responding to these requirements) can be promulgated.

IV. An Extension of the Compliance Deadline Will Only Have a Minimal Impact on Public Safety

Fortunately, an extension of the compliance deadline should have no adverse impact on public safety. Metrocall routinely cooperates with law enforcement officials by providing them, pursuant to valid court orders, "clone" radio receiving devices. These clone pagers allow law

enforcement officials to surreptitiously receive whatever messages the target of the electronic surveillance warrant is receiving on his or her pager, thereby satisfying the intent of CALEA and providing law enforcement officials with both call content and call-identifying information. Indeed, the FBI has repeatedly advised the paging industry that the continued provision of clone pagers is the preferable CALEA solution for traditional, one-way paging services (which comprise approximately 98 percent of the current paging market, as well as Metrocall's share thereof).

In the first phase of its standards-setting process, PCIA's subcommittee reviewed the use of clone pagers for traditional, one-way paging and determined that clones were the most desirable means of satisfying CALEA's obligations for such services. Unlike other possible solutions, clones are inherently transparent both to an intercept subject and a service provider's staff. In addition, clones can support a virtually limitless number of simultaneous interceptions and, hence, are not subject to reasonable capacity restrictions.

Thus, the paging industry has already identified a CALEA solution for approximately 95 percent of current paging services -- a solution that Metrocall is already providing to law enforcement. In seeking this extension, therefore, Metrocall does not intend to delay CALEA compliance. Instead, Metrocall simply seeks sufficient time so that, after having the benefit of law enforcement's capacity and capability requirements, Metrocall can identify, design, develop, test and install a similarly reasonable solution for its remaining two percent of more advanced paging services.

V. Conclusion

For the reasons set forth above, Metrocall requests that the Commission recognize the good faith efforts of the paging industry to satisfy its CALEA obligations and extend the deadline for complying with the assistance capability requirements of CALEA for at least two years until law enforcement's capacity and capability requirements for advanced paging services can be identified and an appropriate industry standard can be promulgated.

Respectfully submitted,

METROCALL, Inc.

By: 

Frederick M. Joyce
Christine McLaughlin
M. Lillie Harrison
Its attorneys

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Date: May 21, 1998

CERTIFICATE OF SERVICE

I, Rhonda M. Johnson, do hereby certify that on this 21st day of May, 1998, copies of the foregoing Petition for Extension of Compliance Date of Metrocall, Inc. were delivered via courier, to the following:

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Washington, DC 20554


Rhonda M. Johnson

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Communications Assistance for
Law Enforcement Act

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CC Docket No. 97-213

PETITION FOR EXTENSION OF THE COMPLIANCE DATE

Pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"),¹ MobileMedia Communications, Inc. and its affiliates ("MobileComm") hereby respectfully petitions the Federal Communications Commission for a two year extension of CALEA's October 25, 1998 deadline for compliance with Section 103. For the reasons discussed in the preceding Joint Petition for Extension of Time ("Joint Petition"), to which this petition is attached and of which this petition forms a part, compliance with CALEA's assistance capability requirements is not reasonably achievable through the application of existing technology, and will not be reasonably achievable for at least two years.

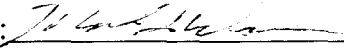
MobileComm is a messaging carrier that serves approximately 3.4 million subscribers in all fifty states and offers a variety of messaging services, including, the following types of services: one-way paging, e-mail services, voice-mail services, two-way paging, through nationwide, MobileComm® City-Linksm service and/or MobileComm® City-Linksm Now and Then service, regional and local coverage. MobileComm's equipment principally is manufactured by Glenayre Electronics, Motorola, Inc. and BBL Industries.

¹ Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

MobileComm is committed to continue to provide cloned pagers to law enforcement in order to satisfy its obligations under CALEA for its traditional, one-way paging services, as it has done in the past, which represents over ninety-five percent of MobileComm's current services.² For the reasons discussed in the Joint Petition, however, compliance for MobileComm's more advanced paging services will not be reasonably achievable by October 25, 1998.

Accordingly, MobileComm requests that the compliance deadline be extended for at least two years until law enforcement's capacity and capability requirements can be identified and an appropriate industry standard for such services can be promulgated.³

Respectfully Submitted for
MOBILEMEDIA COMMUNICATIONS, INC.,

By: 
Mark Witsaman
Senior Vice President and
Chief Technology Officer

² Traditional, one-way paging supports the one-way, wireless transmission of tone, numeric, alphanumeric and voice messages to a radio receiving device (i.e., a pager) within a stipulated, predefined geographic radio coverage area. It does not include such advanced messaging services as roaming (such as City-Link), forwarding, two-way paging or certain other similar services.

³ Because law enforcement's requirements are unlikely to be established (and an appropriate industry standard promulgated) by October 25, 1998, further extensions beyond the current request may be necessary.

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CC Docket No. 97-213

PETITION FOR EXTENSION OF CALEA COMPLIANCE DATE

PageMart Wireless, Inc., ("PageMart"), by its attorneys, and pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"),¹ hereby respectfully petitions the Federal Communications Commission (the "FCC" or "Commission") for a two year extension of CALEA's October 25, 1998 deadline for compliance with the assistance capability requirements of Section 103.² For the reasons discussed herein and in the preceding Joint Petition for Extension of Time filed jointly by PageMart and several other carriers ("Joint Petition"), compliance with CALEA's assistance capability requirements is not reasonably achievable through the application of existing technology, and will not be reasonably achievable for at least two years.

^{1/} Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.* Under Section 107(c) of CALEA, a telecommunications carrier "may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 103." 47 U.S.C. § 1006(c).

^{2/} Section 103 of CALEA requires that by October 25, 1998, telecommunications carriers ensure that their equipment and services can provide law enforcement officials with the call contents and call identifying information for an intercepted communication. 47 U.S.C. § 1002.

PageMart is a messaging carrier providing one-way paging services to over two million subscribers all over the United States, Canada, Mexico and other parts of North and Central America. PageMart currently provides, and is committed to continuing to provide, cloned pagers to law enforcement officials in order to satisfy PageMart's obligations under CALEA for its one-way paging services.³ Cloned pagers are duplicates of pagers owned by certain subscribers being targeted by law enforcement agencies. Because they have the same identifying characteristics as the pagers being cloned, cloned units operate precisely the same as the original units, receiving all messages intended for such units as they are received by those original units.

PageMart believes that these cloned pagers are sufficient to comply with the requirements of CALEA, because they allow law enforcement officials to receive simultaneously the same messages received by paging subscribers under lawful surveillance. This capability is virtually limitless -- it supports the interception of an unlimited number of calls -- and has no capacity restrictions. In addition, the cloning of a pager is basically undetectable to the subject of the interception, as well as to a paging company's staff, and is therefore secure from a law enforcement perspective. These pagers represent an efficient, low-cost way to fulfill the requirements of CALEA, which only mandates the provision of call content and identifying information "that is reasonably available to the carrier."⁴

^{3/} Traditional, one-way paging supports the one-way, wireless transmission of tone, numeric, alphanumeric and voice messages to a radio receiving device (i.e., pager) within a stipulated, predefined geographic radio coverage area. It does not include such advanced messaging features as roaming, forwarding, or two-way paging.

^{4/} 47 U.S.C. § 1002(a).

Until recently, the Federal Bureau of Investigation (the "FBI") also maintained that cloned pagers were sufficient to comply with CALEA.⁵ The FBI has since reversed its course, deciding that cloned pagers are insufficient to comply with CALEA.⁶ The FBI has failed, however, to provide any guidance as to how, other than through cloned pagers, one-way paging carriers can satisfy the law's requirements. Because of the current lack of guidance from the FBI, and the resultant absence of industry standards for how paging carriers can come into compliance with CALEA, it is unreasonable to expect that the FBI will establish clear standards, and that the paging industry will thereafter be able to manufacture, test and deploy conforming equipment -- all by October 1998. Even were clear standards to become available today, that would still not leave sufficient time for compliance by October 1998.

CALEA requires the FCC to extend the required compliance date if "compliance with the assistance capability requirements . . . is not reasonably achievable through application of technology available within the compliance period."⁷ In considering whether to grant such an extension, the FCC must consider factors such as the nature and cost effectiveness of the service or equipment at issue, public safety, and national security.⁸ As demonstrated in the Joint Petition, given the absence of standards from the FBI with respect to full CALEA compliance for one-way paging providers, full compliance by PageMart "is not reasonably achievable" by October 1998. Without definitive standards, PageMart cannot begin the process of building and

^{5/} See, e.g., FBI Comments to the Personal Communications Industry Association ("PCIA") at the PCIA offices in Alexandria, Virginia (Dec. 17, 1997).

^{6/} FBI Reply Comments, CC Docket No. 97-213, at 22 ¶ 35 (Feb. 11, 1998).

^{7/} Id. § 1006(c)(2).

^{8/} Id. § 1008(b)(1).

deploying compliant equipment. Moreover, because of the existence and success of PageMart's cost-effective program of making cloned pagers available to law enforcement officials, an extension of the deadline for compliance with more demanding requirements would not have any adverse impact on public safety or national security. PageMart therefore meets the statutory requirements for an extension, and believes that an extension would serve the public interest.

CONCLUSION

For the foregoing reasons, PageMart requests that the CALEA compliance deadline be extended for at least two years, until law enforcement's capacity and capability requirements can be identified and an appropriate industry standard for such services can be promulgated.

Respectfully submitted,

PAGEMART WIRELESS, INC.

By: /s/ Patrick S. Campbell

Phillip L. Spector

Patrick S. Campbell

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Its Attorneys

Date: May 29, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for)	CC Docket No. 97-213
Law Enforcement Act)	
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PETITION FOR EXTENSION OF THE COMPLIANCE DATE

Pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"),¹ Preferred Networks, Inc. ("CARRIER"), in cooperation and conjunction with its principal vendors, Glenayre Electronics, Inc and Motorola, Inc. ("MANUFACTURER"), (jointly referred to as "Petitioners") hereby respectfully petition the Commission for a two year extension of CALEA's October 25, 1998 deadline for compliance with Section 103. For the reasons discussed in the preceding Joint Petition for Extension of Time ("Joint Petition"), compliance with CALEA's assistance capability requirements is not reasonably achievable through the application of existing technology, and will not be reasonably achievable for at least two years.

Preferred Networks, Inc. is a messaging carrier that serves approximately one half million subscribers in forty nine different states and offers the following types of messaging services: One way paging, voice mail, and outsourcing interconnection services. Preferred Networks' equipment is manufactured principally by Glenayre and Motorola.

¹

Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

Preferred Networks is committed to continue to assist law enforcement by providing the information necessary to configure a cloned pager in order to satisfy its obligations under CALEA for its traditional, one-way paging services, as it has done in the past. These services represent approximately 99 % of Preferred Networks' services.² For the reasons discussed in the Joint Petition, however, compliance for Preferred Networks' more advanced paging services will not be reasonably achievable by October 25, 1998.

Accordingly, Petitioners request that the compliance deadline be extended for at least two years until law enforcement's capacity and capability requirements can be identified and an appropriate industry standard for such services can be promulgated.³

Respectfully Submitted,

PREFERRED NETWORKS, INC.

By: 

Eugene H. Kreeft
Executive VP Engineering

² Traditional, one-way paging supports the one-way, wireless transmission of tone, numeric, alphanumeric and voice messages to a radio receiving device (i.e., pager) within a stipulated, predefined geographic radio coverage area. It does not include such advanced messaging features as roaming, forwarding, or two-way paging.

³ Because law enforcement's requirements are unlikely to be established (and an appropriate industry standard promulgated) by October 25, 1998, further extensions beyond the current request may be necessary.

CERTIFICATE OF SERVICE

I, L. Benjamin Ederington, an attorney in the law firm of Steptoe & Johnson, L.L.P., hereby certify that I have on this June 3, 1998 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Petition to the following:

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